BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of : Leah R. Claimant, vs. Inland Regional Center, Service Agency.	OAH No. L 2005090636

DECISION

Pursuant to the stipulation of the parties and the order of November 3, 2005, issued by Presiding Administrative Law Judge Steven V. Adler, the hearing on this matter was vacated and the matter was submitted on evidence and written argument by the parties. The matter was originally submitted as of November 23, 2005, but the record was reopened and the matter was set for a Prehearing Conference on January 3, 2006.

Additional briefing was received on January 19, 2006. By agreement of the parties, the matter is deemed submitted as of January 23, 2006. Administrative Law Judge Susan A. Ruff reviewed the briefs of the parties and the evidence submitted in this matter. Jack H. Anthony, Esq., represented the claimant. Deborah K. Crudup, Program Manager for the Inland Counties Regional Center, Inc., represented the service agency.

ISSUE

Petitioner's Additional Brief filed on January 19, 2006, states the issue to be decided in this matter as follows:

"Did the Inland Regional Center (IRC) violate its legal duty to Claimant by failing to review, monitor and assess her medical condition?"

FACTUAL FINDINGS

1. Claimant is a five-year-old girl affected by spina bifida with a spinal lesion at the lumbar level, an Arnold-Chiari type II malformation, hydrocephalus, laryngeal paralysis and a seizure disorder. She was born on November 28, 2000.

2. On February 6, 2001, claimant was discharged from the hospital and placed in the Loma Linda Children's Home in San Bernardino County, California.

3. Because of her disabilities, claimant received services from Inland Regional Center under the "California Early Intervention Services Act." (Gov. Code § 95000 et seq.) At the time of her annual review on June 19, 2002, claimant was found eligible for those services based on: 1) Spina Bifida with Arnold Chiari malformation; 2) Post VP and Syrinex shunts; 3) G tube; 4) Vesicostomy; 5) Extremely sensory defensive; and 6) motor concerns.

4. On November 7, 2001, claimant was placed with Special Tots Small Family Home located within San Bernardino County, California. The cost of placement according to the Alternative Residential Model (ARM) rate was $3158 per month, with $101 per month for personal and incidental expenses. This ARM rate was based on the service agency's assessment of claimant and was used by the Department of Social Services to set the rate by which foster care and adoptive placement payments would be made on behalf of claimant. In January 2002, the ARM rate increased to $3,199 and the personal and incidental payment to $106, totaling $3,305 per month.

5. The ARM rate schedule set by the service agency contains different levels of payment based on the type of service provided by the care facility and the amount of care needed by the child. There are four levels of care, with various steps within each level. Level 1 provides for the lowest monthly payment to the care facility and level 4 provides for the highest. The ARM rate of $3158.00 that was assigned for claimant's care corresponded to the "4C" level of payment for a board and care facility. During the year 2001, the highest rate was the "4I" level of payment for a board and care facility, which provided for a monthly payment of $4,938. In 2002, the ARM rates set forth in the ARM schedule for a board and care facility increased to $3,199 for the "4C" level of payment and $4,979 for the "4I" level of payment.

6. On August 28, 2002, claimant was placed in the licensed foster home of Paul and Nancy P. (the prospective parents) in Utah.[1] The placement was made for the purpose of adoption, and the move to Utah was approved by claimant's San Bernardino County social worker. At the time that the placement was made, claimant was still receiving services from the service agency under the Early Intervention Services Act and was considered a "dual agency" child. The "dual agency" status referred to the fact that the child was receiving

[1] The parties never submitted evidence regarding the exact date of claimant's move to Utah. However, both parties have treated August 28, 2002, as the day of the move. Therefore, for purposes of this decision, it will be assumed that claimant physically moved to Utah on that date.

services from the service agency under the authority of the Department of Developmental Services and was a court dependent being placed for foster care/adoption by the Department of Children's Services under the authority of the Department of Social Services. The claimant's next Individualized Family Service Plan (IFSP) Quarterly Review by the service agency was scheduled for September 2002.

7. When claimant first moved into the prospective parents' home, the prospective parents were receiving $3,289 per month pursuant to the California Adoption Assistance Program as foster parents/prospective adoptive parents.[2] This amount was determined according to the "4C" level of service in the service agency's ARM rate schedule, and was based on the service agency's assessment of claimant. The Adoption Assistance Program is designed to facilitate adoption of children with disabilities who might otherwise be unlikely candidates for adoption. The Adoption Assistance Program provides financial support to families to enable them to adopt disabled children. Under California law, the payments made to adoptive parents continue even if the parents move out of state. (Welf. & Inst. Code § 16121.1; Cal. Code Regs., tit. 22, § 35333, subd. (c)(3).) The rate of payment under the Adoption Assistance Program is based on the ARM rate for foster care set according to the ARM schedule.

8. The prospective parents continued to receive the monthly payments after the move to Utah. At the time of claimant's placement with the prospective parents, the San Bernardino County social worker recognized that claimant's level of need qualified claimant for a higher ARM rate than the 4C rate that the prospective parents were receiving. The social worker made representations to the prospective parents that a higher ARM rate (the "4I" rate) and corresponding higher rate of compensation to the prospective parents would be assigned. The service agency and its employees took no part in those representations. The sole connection of the service agency to the adoption process was the use of the service agency assessment to determine the ARM rate to be paid to the prospective parents.

9. The service agency terminated claimant from the Early Intervention Services program on August 28, 2002, because the service agency believed that claimant had moved out of the state and was no longer a resident of San Bernardino County for purposes of the program. The September 2002 IFSP Quarterly Review never took place.

10. The evidence provided by the parties does not establish that the service agency gave written notice to the prospective parents that the services were being terminated. However, the services ceased in August 2002, and no one requested further services from the service agency, nor did anyone seek a fair hearing on claimant's behalf based on the termination of the services.

---

[2] The parties did not provide specific evidence regarding the nature of the prospective parents' family home. However, according to the report of claimant's Utah physician dated February 13, 2003, the prospective parents had six other children in the household besides claimant, four of whom were special needs children. However, none of those other children have the significant health difficulties that claimant has.

11. After the move to Utah, claimant's health deteriorated. Claimant was hospitalized in December 2002. As a result of the deterioration of claimant's condition, claimant required the insertion of a tracheotomy tube and has been ventilator dependent since that time. Claimant's condition is very serious and claimant requires constant care to remain alive. The prospective parents have been providing that care since claimant's move to Utah. Claimant's condition is too fragile for claimant to be moved back to California, and she must remain in Utah.

12. On January 14, 2003, the San Bernardino County Superior Court, sitting in a separate session as a Juvenile Court, terminated the rights of claimant's birth parents and ordered that claimant be placed for adoption. Claimant was continued as a dependent of the court in the custody of the Director of the Department of Children's Services. Claimant continued to live in Utah with claimant's foster parents/prospective adoptive parents.

13. On February 13, 2003, Nancy Murphy, a physician in Utah, conducted an examination of claimant and concluded that the prospective parents needed additional monetary support in order to properly care for claimant. The maximum rate paid by the state of Utah for foster care in a family home is significantly below the amount currently being paid to the prospective parents by the California adoption/foster care program.

14. On February 24, 2003, Sunni Reed, the California adoption worker assigned to claimant's case, sent a letter to the service agency requesting a reconsideration of claimant's ARM rate on the basis of claimant's deteriorating health. Ms. Reed is a Licensed Clinical Social Worker and a Social Service Practitioner for the County of San Bernardino, Department of Children's Services. Ms. Reed forwarded documentation from claimant's physician to the service agency and explained that claimant's current caretakers would like to adopt claimant, but "will not be able to do so unless they have the appropriate financial resources. They need at least $5,000 per month to meet her needs."

15. On March 10, 2003, the service agency sent a reply letter to Ms. Reed, stating that the medical information submitted by Reed had been reviewed and the current ARM rate of $3,289 per month was found to be adequate to meet the child's level of care.

16. On April 29, 2003, Jeff Dean, the Health Program Manager for the Utah Division of Health Care Financing sent a memorandum to the "San Bernardino County Adoptions" discussing claimant's life threatening conditions. He stated that, if not for the exceptional care being provided by the prospective parents to claimant, claimant would require placement in a skilled nursing facility, a residential treatment facility or a "professional parent home" which would require much higher monthly payments than the $5,000 per month being sought by the prospective parents.

17. On June 27, 2003, the Department of Social Services Adoptions Branch issued a notice of placement authorizing an Adoption Assistance Payment of $3,289 to the prospective parents. The notice was signed by claimant's California social worker and the Utah Department of Children and Family Services social worker.[3]

18. On November 28, 2003, claimant turned three years old and was no longer eligible for services under the Early Intervention Services Act. The service agency never assessed claimant to see whether claimant had a disability that would make claimant eligible for services under the Lanterman Developmental Disabilities Service Act. (Welf. & Inst. Code §§ 4500 et seq.) The service agency believed that it did not have an obligation to provide that assessment because claimant was no longer a resident of California.

19. The prospective parents made a request to San Bernardino County for a higher rate of Aid to Families with Dependent Children (AFDC) foster care benefits. The county took the position that the service agency, not the county, set the foster care rates, and that the rate could not be changed because the service agency refused to set a higher ARM rate in the March 2003 response to the social worker's request. The prospective parents filed for an administrative hearing before the Department of Social Services to seek an increase in that rate. A hearing was held on December 9, 2003.

20. On March 29, 2004, Administrative Law Judge Christina Phillips issued a proposed decision in the Department of Social Services case which she made the following findings:

> "As the Regional Center is responsible to set the care and supervision rate under California authority and the rate set was higher than the rate to which claimant would be eligible without a nursing certificate in Utah, San Bernardino County correctly deferred to the Regional Center rate for [claimant] to set claimants Aid to Families with Dependent Children (AFDC) Foster Care and proposed Adoption Assistance Program rates.
>
> However, as claimants relied to their detriment of the clear and unqualified promise of the county social workers in accepting [claimant] at a supervision rate of not less than the 4(I) rate or not less than $5,000 per month, San Bernardino is estopped from utilizing California authority to reduce the rate of care below $5,000 per month effective the June 1, 2003 discontinuance date from the Foster Care Program."

[3] This finding is based upon the factual finding set forth in the Decision of the Director of the Department of Social Services issued on April 15, 2004. The parties did not submit a copy of the Notice of Placement into evidence in the instant case.

21. On April 15, 2004, the Director of the Department of Social Services issued an Alternate Decision, determining that the service agency had the obligation to reassess claimant, because claimant was a service agency client:

> "San Bernardino County has correctly deferred to the State Department of Developmental Services Regional Center for a rate determination for the claimant's foster care child. Any dissatisfaction regarding the Regional Center rate determination would be subject to an appeal with the Department of Developmental Services. The principles of equitable estoppel do not modify this result."

The prospective parents filed a Petition for Writ of Mandate seeking to overturn the Director's Alternate Decision. That mandamus action is currently pending in the Superior Court.

22. On October 28, 2004, the San Bernardino County Juvenile Court granted claimant's motion to have a civil attorney appointed to represent claimant's interests pursuant to Welfare and Institutions Code section 317, subdivision (a). The copy of the court order attached to claimant's papers does not provide the name of the attorney who was appointed, but claimant's current attorney represents that he was the attorney appointed pursuant to that order. There is no reason to doubt his representation. Therefore, for purposes of this decision it is established that claimant's current attorney Jack H. Anthony, Esq., was appointed as claimant's civil attorney for purposes of dealing with the dispute with Department of Children's Services over the rate of pay to the prospective parents.[4]

23. On August 11, 2005, claimant's attorney wrote a letter to the service agency. He discussed claimant's condition and made a formal request for "the reassessment of [claimant's] condition for the purpose of properly evaluating the level of service classification in keeping with her current medical condition." He requested that the reassessment take place at claimant's place of residence in Utah, because of her fragile medical condition. He requested a written response to his request within 5 working days under Welfare and Institutions Code section 4710, subdivision (b). The service agency did not respond to this request.

24. On October 31, 2005, Dr. Steven Bleyl of the Department of Pediatrics, University of Utah, drafted a letter regarding his visit with claimant and the prospective parents on March 30, 2005. In that letter, Dr. Bleyl discussed claimant's condition. He stated his opinion that claimant has a genetic syndrome and that Cornelia de Lange syndrome was the best diagnosis to explain claimant's problems.

---

[4] For purposes of this proceeding, it will also be assumed that the juvenile court's order permitting the attorney to represent claimant also covers the instant case involving the Department of Developmental Services and that the court appointment makes him an "authorized representative" under Welfare and Institutions Code section 4701.6. Therefore, there is no jurisdictional or standing issue in the present case.

25. The prospective parents have undergone significant financial hardships in order to care for claimant in their home in Utah. In particular, claimant's prospective father was forced to quit his job in order to stay home and help his wife provide the constant care that claimant needs. At the present time, the prospective parents' adoption of claimant is stalled because of the litigation over the precise amount of the Adoption Assistance Program payment.

LEGAL CONCLUSIONS

Statutory and Regulatory Provisions

1. The determination of this case involves an analysis of several different programs which were created by the Legislature to assist children with disabilities in California, including the California Early Intervention Services Act (Gov. Code §§ 95000 et seq.),[5] the Lanterman Developmental Disabilities Services Act (Welf. & Inst. Code §§ 4500 et seq.), and the Adoption Assistance Program. (Welf. & Inst. Code §§ 16115 et seq.)

2. The Adoption Assistance Program (AAP) was enacted to remove or reduce barriers to the adoption of children who would otherwise remain in long-term foster care, such as children with mental, physical, emotional or medical disabilities. The AAP accomplishes this goal by providing financial assistance to foster parents who wish to adopt the disabled child.

3. California Code of Regulations, title 22, section 35333 discusses the determination of the amount and duration of the AAP benefit. That section states, in part:

> "The Adoption Assistance Program (AAP) provides benefits to facilitate the adoption of children who otherwise would not likely be adopted. The AAP benefit is a negotiated amount based upon the needs of the child and the circumstances of the adoptive family. The responsible public agency shall negotiate the amount of the AAP benefit and make the final determination of the amount according to the requirements of this section."

Section 35333 goes on to state that the responsible public agency shall assess the child's needs and determine the maximum AAP benefit for which the child is eligible, but does not specify which agency is the "responsible public agency." However, the section clearly contemplates that the responsible public agency may be different from the financially responsible county.

---

[5] The California Early Intervention Services Act provisions derive from the Federal Individuals with Disabilities Education Act provisions located within Title 20, United States Code, Sections 1431 et seq.

The section also makes it clear that benefits are intended to continue, even if the child is placed for adoption outside of California:

> "If the child is placed for adoption outside California, the AAP benefit shall be based on the foster care maintenance payment, not to exceed the applicable California age-related, state-approved foster family home care rate or the applicable rate in the host state, whichever is higher, for which the child would otherwise be eligible."

(Cal. Code Regs., tit. 22 § 35333, subd. (c)(3).)

Section 35333 discusses the responsibility of a regional center, such as the service agency as follows:

> "(C) If the child is a client of a California Regional Center (CRC) for the Developmentally Disabled, the maximum rate shall be the foster family home rate formally determined for the child by the Regional Center using the facility rates established by the California Department of Developmental Services. CRC clients who leave California shall be able to continue to receive AAP benefits based on the most recent level of need assessed by the CRC."

(Cal. Code Regs., tit. 22 § 35333, subd. (c)(4)(C).)

4. The Lanterman Developmental Disabilities Services Act (hereinafter the "Lanterman Act") is set forth at Welfare and Institutions Code sections 4500 et seq. The Act is intended to make services and supports available to California residents with developmental disabilities and their families to enable those individuals to "approximate the pattern of everyday living available to people without disabilities of the same age." (Welf. & Inst. Code § 4501.) The Legislature fashioned a system of regional center coordination to provide the necessary services. The regional centers are not themselves government agencies, but they are non-profit entities that receive government funding in order to provide services under the Lanterman Act. They are contractually required to "render services in accordance with applicable state laws and regulations." (Welf. & Inst. Code § 4629, subd. (b).)

The Lanterman Act requires a regional center to perform intake and assessment of "[a]ny person believed to have a developmental disability…." (Welf. & Inst. Code § 4642.)

Not every disabled child in California is entitled to regional center services under the Lanterman Act. Instead, the Lanterman Act contains a fairly narrow definition of developmental disability:

> "Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature."

(Welf. & Inst. Code § 4512, subd. (a).)

5. At various points, claimant's moving papers indicate that the claimant is a client of the service agency under the Lanterman Act. However, the evidence in the file does not support that claim. Instead, the claimant was evaluated and found eligible for services under the Early Intervention Services Act. (Gov. Code §§ 95000 et seq.) Claimant has never been evaluated by the service agency to see if claimant meets the eligibility requirements of the Lanterman Act.

6. The Early Intervention Services Act (Early Start Act) also relies upon regional center coordination, but it is a separate program with different purposes and different eligibility criteria. The Early Start Act is intended to provide early intervention services for toddlers and infants who have disabilities or are at risk for disabilities. The intent of the act is to minimize the need for special education and related services in later years through early intervention and treatment. The eligibility requirements for Early Start Act services (Gov. Code § 95014(a)) are much broader than those for Lanterman Act services, and it is possible for child to meet Early Start Act eligibility requirements but not the more narrow requirements of the Lanterman Act.

7. The Early Start services terminate when the child turns three years old. Those children who are not eligible for regional center services under the Lanterman Act cease to be clients of the regional center once they pass beyond the maximum age for Early Start services.

8. It is undisputed that claimant was a client of the regional center under the Early Start Act at the time of the initial placement with the prospective parents. It is also undisputed that claimant is now beyond the age in which claimant would be eligible for regional center services under the Early Start Act. It is undisputed that claimant has never been assessed for nor received services under the Lanterman Act.

Claimant is Not Eligible for Services Under the Lanterman Act

9. Claimant's issue set forth in "Petitioner's Additional Brief" seeks a determination that the service agency had a legal duty to "review, monitor and assess" claimant's medical condition. Claimant does not cite a statutory or regulatory provision for that legal duty, so it is unclear whether claimant contends that the legal duty arises under the Early Start Act, the Lanterman Act or the AAP. It is also not clear at what point in time claimant contends that the service agency had such a legal duty.[6]

10. Therefore, it is necessary to turn to the August 11, 2005, letter from attorney Jack H. Anthony to begin the analysis of the case. In that letter, the attorney, on behalf of claimant and the prospective parents, states that claimant is a "client" of the service agency and requests a reassessment of claimant's condition for the purpose of properly evaluating "the level of service classification in keeping with her current medical condition." In other words, the letter asks the service agency to reassess claimant for purposes of determining the ARM rate which in turn sets the rate for the foster care/Adoption Assistance Program payments to the prospective parents.

11. Based on that letter, it appears that claimant's issue for the instant case is whether the service agency had a duty to "review, monitor and assess" claimant's medical condition as of August 11, 2005, the date the request was made.

12. On August 11, 2005, claimant was not a client of the service agency and had not been for quite some time. The provisions regarding the AAP program only require the service agency to assess a child for purposes of setting the ARM rate when the child is a "dual-agency" child. In other words, the service agency has no duty to perform such an assessment if the child is not eligible to receive California regional center services.

There, before determining whether the service agency violated a duty to reassess for ARM purposes, it is first necessary to decide whether claimant was eligible for services from the service agency as of August 11, 2005, the date of the claimant's request to the service agency. There is no dispute that claimant was too old to receive services under the Early Start Act as of that date, so if claimant is eligible for services at all, it must be under the Lanterman Act. If claimant is not eligible for Lanterman Act services, then claimant is not a "dual-agency" child and another agency (presumably the Department of Children's Services or the Department of Social Services) has the duty to conduct any ARM rate reassessment, not the service agency.

[6] At the Prehearing Conference on January 3, 2006, the Administrative Law Judge requested that claimant file a supplemental brief stating the precise issue(s) upon which claimant sought relief. Instead of clarifying the issues in the supplemental briefing, claimant did the opposite and listed an issue which was even less precise than those originally listed in claimant's initial moving papers.

Claimant has never made a request to the service agency for a Lanterman Act intake assessment. However, it is possible that claimant's issue in the instant case ("review, monitor and assess") refers to an intake assessment under the Lanterman Act. Therefore it is appropriate to review the Lanterman Act provisions to see if such assessment was required.

13. There is no dispute that had claimant remained physically in San Bernardino County, the service agency would have performed an assessment of claimant before claimant turned three years old to see if claimant was eligible for services under the Lanterman Act. There is also no dispute that if the prospective adoptive parents moved back to San Bernardino County with claimant now, the service agency would have a legal duty to perform intake and assessment services for claimant pursuant to Welfare and Institutions Code section 4642:

> "Any person believed to have a developmental disability, and any person believed to have a high risk of parenting a developmentally disabled infant shall be eligible for initial intake and assessment services in the regional centers."

14. There is also no dispute that if claimant had been born in Utah and was placed by the Utah adoption authorities with a prospective adoptive family in Utah, claimant would not be entitled to any services from California regional centers.

15. The critical legal issue for this case is whether the service agency is correct that claimant ceased to be eligible for regional center services as soon as claimant physically crossed the California border to reside with her prospective adoptive parents in Utah. If claimant ceased to be eligible for regional center services, then the service agency had no duty to perform intake and assessment services under the Lanterman Act.

16. California law states that regional center services shall be provided to eligible California residents in all parts of California. For example, the Lanterman Act discusses the continuation of services when a client of a regional center moves from one location to another in California. (Welf. & Inst. Code § 4643.5, subdiv. (a).) On the other hand, there is nothing in the Lanterman Act to suggest that the California Legislature intended to provide California regional center services for every disabled individual living in the entire United States. If claimant was living with her birth parents and those parents chose to move to Utah, claimant would not be eligible for California regional center services once she moved across the border.

17. A review of the laws related to regional centers supports this general rule. California Code of Regulations, title 17, section 54010, specifies that any "resident" of the State of California believed to have a developmental disability is eligible for services. Welfare and Institutions Code section 4519 provides that a regional center shall not expend funds for the purchase of "any service outside the state" unless certain procedural requirements are met. In addition to other requirements, in order to make the out-of-state purchase, the director must determine that the proposed service or an appropriate alternative

"is not available from resources and facilities within the state." The regional center may place a client out-of-state if the requirements of Section 4519 are met, but that requires a report which summarizes "the regional center's efforts to locate, develop, or adapt an appropriate program for the client within the state."

A regional center is required to "investigate every appropriate and economically feasible alternative for care…within the region." Only if suitable care cannot be found within a region may the regional center obtain services outside its region. (Welf. & Inst. Code § 4652.)

18. Claimant argues that because claimant is a dependent of the juvenile court of San Bernardino County, claimant is legally considered a resident of San Bernardino County. Claimant cites Welfare and Institutions Code section 17.1, subdivision (e) in support of this assertion. However, in light of the clear intent of the Legislature that regional center services be provided in California, the provisions of section 17.1, subdivision (e) do not appear to be controlling in the instant case.[7]

Although claimant may be considered a resident of San Bernardino County for juvenile court proceedings and adoption purposes, she is not now, nor will she ever again (unless her health changes for the better), physically live in San Bernardino County or even

---

[7] Welfare and Institutions Code section 17.1 states:

"Unless otherwise provided under the provisions of this code, to the extent not in conflict with federal law, the residence of a minor person shall be determined by the following rules:

(a) The residence of the parent with whom a child maintains his or her place of abode or the residence of any individual who has been appointed legal guardian or the individual who has been given the care or custody by a court of competent jurisdiction, determines the residence of the child.

(b) Wherever in this section it is provided that the residence of a child is determined by the residence of the person who has custody, "custody" means the legal right to custody of the child unless that right is held jointly by two or more persons, in which case "custody" means the physical custody of the child by one of the persons sharing the right to custody.

(c) The residence of a foundling shall be deemed to be that of the county in which the child is found.

(d) If the residence of the child is not determined under (a), (b), (c) or (e) hereof, the county in which the child is living shall be deemed the county of residence, if and when the child has had a physical presence in the county for one year.

(e) If the child has been declared permanently free from the custody and control of his or her parents, his or her residence is the county in which the court issuing the order is situated."

Because the prospective parents have been given care and custody of claimant, the appropriate subdivision of Section 17.1 might arguably be subdivision (a), not (e). However, neither party has briefed the applicability of subdivision (a). Instead, claimant asserts that subdivision (e) is applicable here. The regional center discusses a Government Code provision regarding residency that is not directly on point in the case of a court-dependent child, but does not otherwise dispute the assertion that subdivision (e) applies.

visit San Bernardino County. It is undisputed that the prospective parents and their family live in Utah, are residents of Utah, are providing care to claimant in Utah and intend to remain in Utah. Claimant has been physically located in Utah since she was placed with the family in August 2002, over three years ago. She is most likely eligible for special education and/or other disability-related services in Utah, and may in fact be receiving those services. It would defy the clear Legislative intent behind the Lanterman Act to determine that claimant should be provided with California regional center services when she is hundreds of miles away from the nearest California regional center.

19. The case of *In re Eleanor A* (1978) 84 Cal.App.3d 184, cited by claimant does not change this general rule. That case dealt with a disabled child who was a dependent of the court and was moved from one county to another in California for therapeutic purposes by order of the court. There was "no evidence of…intent to become a resident" of the county where the therapeutic facility was located. The court held that the first county still had responsibility for the child. The instant case, unlike the *Eleanor A* case, is not a dispute between California counties over which county should have responsibility for a child. Claimant was not sent to Utah by the service agency for therapeutic purposes. Had the service agency placed claimant in Utah because Utah had the most appropriate residential treatment facility to meet claimant's needs, then the service agency would reasonably be expected to continue paying for such services. In the instant case, however, claimant went to Utah solely because claimant's prospective adoptive parents choose to live there. The prospective parents are not licensed health care professionals, and the treatment they provide to claimant is only in their capacity as foster parents/prospective adoptive parents of claimant. The *Eleanor A* case is not controlling in the instant case.

20. The service agency had no legal duty to provide services under the Lanterman Act to claimant once claimant moved out of California. For that reason there was also no duty by the service agency to assess claimant for those services.

21. The next question is whether anything in the laws regarding AAP payments changes this general rule. The statutes and regulations dealing with the AAP do not specifically state that a regional center is required to extend regional center services to a child placed for adoption in another state. Instead, it appears that Legislature contemplated interstate service agreements in order to provide health services to adopted children who move out of state:

> "The Director of Social Services and the Director of Health Services may enter into interstate agreements pursuant to Chapter 2.6 (commencing with Section 16170) that provide for medical and other necessary services for special needs children, establish procedures for interstate delivery of adoption assistance and related services and benefits, and provide for the adoption of related regulations."

(Welf. & Inst. Code § 16121.2.)

Welfare and Institutions Code section 16170 and the sections that follow it discuss the difficulties with providing medical and other necessary services for adopted children who move to another state. Those sections authorize the Department of Social Services and Department of Health Services to enter into interstate agreements with agencies of other states which can include "provisions establishing procedures and entitlement to medical and other necessary social services for the child in accordance with applicable laws, even though the child and the adoptive parents are in a state other than the one responsible for or providing the services or the funds to defray part or all of the costs therefore." (Welf. & Inst. Code § 16175, subd. (a).) The sections also go on to state that a special needs child may be eligible for Medi-Cal benefits even when the adoptive family moves out of state.

It is significant that these sections do not discuss continuation of California regional center services for out-of-state adopted children. Instead, these sections contemplate that medical and other services will be provided by agencies in the other state. The sections do not even discuss interstate agreements by the Department of Developmental Services. If the Legislature had intended regional center services to follow adopted children out of the state, it would have been very easy to put an additional provision in the Welfare and Institutions Code to discuss regional center services. The absence of such a provision from both the AAP statutes and the Lanterman Act is a strong indication that the Legislature did not intend the Lanterman Act services to extend out-of-state. Instead, as stated above, the Lanterman Act contemplates that regional center services will be purchased from California vendors and provided in state. (Welf. & Inst. Code §§ 4519 and 4652.)

22. Because claimant was not eligible for Lanterman Act services as of August 11, 2005, the service agency had no legal duty to claimant to "review, monitor and assess her medical condition." Therefore, the service agency did not violate any legal duty to claimant by failing to do those things.

Claimant is Not Entitled to an Assessment Under the Early Start Act

23. As stated above, claimant's issue for consideration in this due process proceeding is vague as to time. The "Petitioner's Additional Brief" filed by claimant on January 19, 2006, for the first time in claimant's briefing, mentions the Early Start Act and discusses the service agency's ongoing duty to assess children receiving services under the Early Start Act.

24. There is no dispute that the service agency terminated Early Start Act services as of the date claimant moved out of California. No IFSP meetings were held after August 2002, and no services were provided.[8]

[8] The Petitioner's Additional Brief mentions that the regional center should have provided notice to the prospective parents before terminating the Early Start Act services in August 2002. However, claimant did not list this as one of the issues to be decided, so it appears that claimant raises it as evidence that the Early Start Act services did not terminate when claimant moved to Utah. Claimant also raises the March 2003 letter from the service agency as evidence that claimant continued to be a service agency client after the move to Utah. However,

Just as the Lanterman Act services are tied to location in California, the Early Start Act services provided by California regional centers are intended for children physically located in California. The Federal provisions dealing with Early Start discuss a "statewide system" for services (20 U.S.C. § 1435, subd. (a)) and require a state to adopt a policy "that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and infants and toddlers with disabilities who are wards of the State…." (20 U.S.C. § 1434.) Although there was no evidence presented regarding any services claimant may or may not be receiving in Utah, it is likely that claimant began to receive Early Start services/and or special education services in Utah pursuant to the Federal Individuals with Disabilities Education Act as soon as claimant moved into the prospective parents' home.

Because claimant ceased to be a service agency client when claimant moved to Utah in August 2002, claimant was not a "dual-agency child" and the service agency had no duty to reassess claimant for ARM rate purposes. When the service agency conducted the reassessment in March 2003, it had no legal obligation to do so. The service agency could legally have declined to perform that service.

25. Further, even assuming that the service agency had a duty to "review, monitor and assess" claimant's medical condition at the time of the initial request for reassessment made in February 2003, the evidence establishes that the regional center did in fact conduct a reassessment based on the medical records and information supplied. Therefore, the service agency did not "violate its legal duty" to conduct an assessment. The service agency determined that the ARM rate already set was adequate to meet claimant's needs. Claimant never sought a fair hearing or due process hearing to contest that determination, and the instant case does not involve any objection by claimant to the service agency's finding. Likewise, claimant has never challenged the service agency's decision to terminate services under the Early Start Act.[9]

---

those two pieces of evidence do not support a finding that the Early Start Act services continued after August 2002, in light of the overwhelming evidence to the contrary.

[9] For this reason, there is no need to decide the peripheral issues raised in defense by the service agency: 1) what are the legal obligations of regional centers under the Department of Social Services regulations regarding ARM rate assessments of "dual-agency" children; 2) whether a challenge regarding an ARM rate determination of a dual-agency child should be made to the Department of Social Services, not the Department of Developmental Services; 3) whether the time period in which claimant could challenge the service agency's decision to terminate Early Start services has passed; 4) whether the time period in which claimant could challenge the service agency's letter of March 2003 has passed; 5) whether there was any type of tolling of deadlines to file the fair hearing request because of claimant's status as a dependent of the juvenile court; 6) whether claimant's severe and life threatening disabilities would make her a poor candidate for foster care placement in California at the present time (and therefore make the ARM rates inapplicable); and 7) whether claimant's foster/adoptive parents and/or their attorney had standing in 2003 to challenge the service agency's March 2003 determination.

ORDER

Claimant's appeal of the service agency's failure to review, monitor and assess claimant's medical condition is dismissed.

NOTICE

This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5. Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days of receiving notice of the final decision.

Dated: February 3, 2006

SUSAN A. RUFF
Administrative Law Judge
Office of Administrative Hearings